

FILED
IN THE IOWA DISTRICT COURT FOR CLAY COUNTY

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES (99AG23542),

Plaintiff,

vs.

BRUCE CLICK,

Defendant.

2012 SEP 10 PM 12:16

CLAY COUNTY, IOWA
LAW NO. CV CV 628034

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources ("IDNR")
and for its claim against Defendant Bruce Click, states as follows:

INTRODUCTION

1. The State of Iowa seeks the assessment of civil penalties and the issuance of a permanent injunction against the Defendant for discharging manure into a water of the state; water quality violations; and improper land application of manure at Defendant's confinement feeding operation for swine located in Clay County, Iowa.

PARTIES

2. The State of Iowa is a sovereign state of the United States of America.
3. The IDNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.
4. Defendant Bruce Click owns and operates a swine confinement feeding operation located at 1415 480th Street, Peterson, Iowa 51047.

DEFINITIONS

5. "Animal feeding operation" means "a lot, yard, corral, building, or other area in which

animals are confined and fed and maintained for forty-five days or more in any twelve-month period, and all structures used for the storage of manure from animals in the operation.” Iowa Code § 459.102(4).

6. “Confinement feeding operation” means “an animal feeding operation in which animals are confined to areas which are totally roofed.” Iowa Code § 459.102(14).

7. “Confinement site manure applicator” means “a person, other than a commercial manure service . . . or service representative, who applies manure on land if the manure originates from a manure storage structure.” Iowa Code § 459.102(17).

8. “Manure” means “animal excreta or other commonly associated wastes of animals, including, but not limited to, bedding, litter, or feed losses.” Iowa Code § 459.102(39).

9. “Pollutant” means “sewage, industrial waste, or other waste.” Iowa Code § 455B.171(18).

10. “Release” means “an actual, imminent or probable discharge of manure from an animal feeding operation structure to surface water, groundwater, drainage tile line or intake, or to a designated area resulting from storing, handling, transporting or land-applying manure.” 567 Iowa Admin. Code 65.1.

11. “Water of the state” means “any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.” Iowa Code § 455B.171(37). The Little Sioux River and its unnamed tributaries are waters of the state as defined in Iowa Code section 455B.171(37).

12. “Water Pollution” means “the contamination or alteration of the physical, chemical,

biological, or radiological integrity of any water of the state by a source resulting in whole or in part from the activities of humans, which is harmful, detrimental, or injurious to public health, safety, or welfare, to domestic, commercial, industrial, agricultural, or recreational use or to livestock, wild animals, birds, fish, or other aquatic life.” Iowa Code § 455B.171(38).

JURISDICTION

Water Pollution Control Regulations

13. The IDNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172(1). The IDNR maintains jurisdiction over and regulates the direct discharge of pollutants to a water of the state. Iowa Code § 455B.172(5).

14. The Iowa Environmental Protection Commission (EPC) has authority to establish water quality standards, pretreatment standards, and effluent standards; and adopt rules relating to the location, construction, addition to, or modification of disposal systems, or for the discharge of any pollutant; and inspection, monitoring, record keeping, and reporting requirements for owners and operators of disposal systems. Iowa Code §§ 455A.6(6) and 455B.173(2), (3) and (6). The EPC’s rules implementing these provisions are contained in 567 Iowa Admin. Code 60-69.

15. The dumping, depositing, or discharging of pollutants into any water of the state is prohibited, except adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the IDNR. Iowa Code § 455B.186(1) and 567 Iowa Admin. Code 62.1(1).

16. All Iowa surface waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions. 567 Iowa Admin. Code 61.3(2)(c).

17. Surface waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to human, animal, or

plant life. 567 Iowa Admin. Code 61.3(2)(d).

18. A person who violates any provision of Iowa Code chapter 455B, Division III, Part 1 or any permit, rule, or order issued thereunder shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(2).

19. The Attorney General is authorized, at the request of the IDNR director with approval of the EPC, to initiate any legal proceedings, including an action for injunction or temporary injunction, necessary to enforce the penalty provisions of said statutes and any rules promulgated or any provision of any permit issued thereunder. Iowa Code § 455B.191(5).

Animal Feeding Operations Regulations

20. The EPC has the authority to establish rules relating to the construction, expansion, or operation of animal feeding operations, including related animal feeding operation structures. Iowa Code § 459.103(1). These rules shall include, but are not limited to, minimum manure control, the issuance of permits, and departmental investigations, inspections, and testing. Iowa Code § 459.103(1). These rules are contained in 567 Iowa Admin. Code 65.

21. The owner of an animal feeding operation, other than a small animal feeding operation, shall submit a manure management plan to the IDNR if the confinement feeding operation was constructed or expanded after May 31, 1985, or the owner constructs a manure storage structure. Iowa Code §§ 459.312(1)(a)(1) and (2); 567 Iowa Admin. Code 65.16(1)(b)(1) and (2).

22. The manure management plan must identify the methods that will be used to land-apply the confinement feeding operation's manure. 567 Iowa Admin. Code 65.17(7).

23. The owner of an animal feeding operation must maintain a current manure management plan and records demonstrating compliance with the plan at the site of the operation. Iowa Code § 459.312(3); 567 Iowa Admin. Code 65.17(12) and (13). If manure management

practices change, appropriate changes must be made to the manure management plan. 567 Iowa Admin. Code 65.17(12).

24. The minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced by the operation between periods of manure application. A confinement feeding operation shall not discharge manure directly into water of the state or into a tile line that discharges directly into water of the state. Iowa Code § 459.311(1) and 567 Iowa Admin. Code 65.2(3).

25. All manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface water or groundwater pollution. Iowa Code § 459.311(2) and 567 Iowa Admin. Code 65.2(7).

26. The department and the attorney general may enforce the provisions of subchapter III in the same manner as provided in section 455B.175. Iowa Code § 459.601(2)(b).

27. If there is substantial evidence that any person has violated or is violating any provision of part 1 of division III of chapter 455B, chapter 459, subchapter III, or chapter 459A, or any rule or standard established or permit issued pursuant thereto, the director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease. Iowa Code § 455B.175(1).

28. The director, with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to section 455B.191 or 459.604. Iowa Code § 455B.175(3).

29. A person who violates subchapter III of chapter 459 shall be subject to a civil penalty which shall be established, assessed and collected in the same manner as provided in section 455B.191. Iowa Code § 459.603.

30. A person who violates any provision of Iowa Code chapter 455B, division III, part 1,

or any permit, rule, standard, or order issued under chapter 455B, division III, part 1, shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(2).

31. The Attorney General is authorized, at the request of the IDNR director with approval of the EPC, to initiate any legal proceedings, including an action for injunction or temporary injunction, necessary to enforce the penalty provisions of said statutes and any rules promulgated or any provision of any permit issued thereunder. Iowa Code § 455B.191(5).

FACTS

32. The Defendant Bruce Click (Click) owns and operates a confinement animal feeding operation located in the NW 1/4 of Section 23, Peterson Township, Clay County, Iowa. The facility has 4,000 finishing hogs (1,600 animal units). The facility consists of two 2,000 head barns that have eight foot deep manure storage pits under each building.

33. On November 29, 2010, Click submitted a Manure Management Plan (MMP) for his facility to the IDNR. Click's MMP provides that in Application Scenarios A and C for fields that would be utilized for corn production, the manner of application of manure would be surface application with incorporation into the soil within 24 hours.

34. On September 19, 2011, the IDNR received a complaint that northeast of Peterson, Iowa, an unnamed tributary of the Little Sioux River (unnamed tributary) had foam on it and a manure odor for several days.

35. On September 19, 2011, the IDNR responded to the complaint by heading to a box culvert where the unnamed tributary flows under 140th Avenue. The IDNR observed that the unnamed tributary was discolored and had a strong manure odor. The IDNR continued upstream of the box culvert and came to Click's facility, the closest facility to the box culvert.

36. The IDNR walked around the perimeter of Click's facility to determine if the manure had come from his facility. The IDNR observed what appeared to be hose drag marks in the dirt between the south building and an adjacent cornfield. Upon closer inspection, the IDNR observed a blue hose, approximately two (2) inches in diameter, concealed two to three rows into a cornfield.

37. The IDNR followed the hose to the south for approximately 400-500 feet and discovered that the hose ended in a large pool of pure manure. The IDNR then followed the flow path of the manure and observed the manure flowing into a tile inlet in the field and out letting into the unnamed tributary.

38. Click arrived onsite after receiving a phone message from the IDNR about the manure discharge. Click informed the IDNR that his manure pits had filled up faster than expected because of a water leak in the buildings. Click stated that on September 18, 2011, he placed a sump pump into the pit of the south building and pumped manure out into the cornfield for three (3) to four (4) hours.

39. Click further stated that the pumping had dropped the level of manure in the south building by approximately two (2) inches and did not monitor the pumping because he had previously pumped manure in a similar manner and no discharge occurred. When questioned about the prior pumping, Click stated that about a month earlier, when the manure pit below the north building had become full, he had pumped manure from the building for about five (5) to six (6) hours. Click then left to construct a berm to stop the manure flow into the tile inlet.

40. The IDNR proceeded to the confluence of the tile outfall and tributary to take field samples, laboratory samples, photographs, and make observations at various sections of the tributary. The IDNR observed that the discharge from the tile outfall was very murky and brown and had a strong manure odor. A laboratory sample at the discharge point indicated an ammonia concentration

of 3,900 mg/L. Upstream of the discharge point, the IDNR observed that the water was clear with no manure odor and a field sample indicated an ammonia concentration of 0.6 parts per million (ppm) and a lab sample indicated an ammonia concentration of 0.3 mg/L. Before leaving Click's facility, the IDNR inspected the manure pit below the south building and observed that the manure level was approximately two (2) inches below the concrete cross member.

41. The IDNR then proceeded downstream of the tributary to the box culvert at 140th Avenue. The water was still brown and murky with a strong smell of manure. A laboratory sample at the site indicated an ammonia concentration of 2,300 mg/L. The IDNR continued to follow the tributary downstream and observed that the tributary was still brown with a strong manure odor to it.

42. The IDNR continued further downstream to the bridge on Highway 10 over the tributary. The IDNR observed a sheen on the water, but was otherwise clear and live aquatic life was visible. Click arrived at the bridge, and the IDNR recommended that he attempt to reduce the manure load on the creek by damming a section of it and pumping the manure-laden water out.

43. On September 20, 2011, the IDNR returned to the Highway 10 bridge over the unnamed tributary to observe its condition. The IDNR observed a sheen on the water but live aquatic life was present. The IDNR proceeded upstream to the box culvert at 140th Avenue. There, the water was still brown and murky with a strong manure odor. The IDNR then proceeded to Click's facility and observed that the manure level in the pit below the north building was six (6) inches below the concrete cross member.

44. On September 21, 2011, the IDNR received a phone call from Jim Luzier with the University of Iowa Hygienic Laboratory. Mr. Luzier was in the process of conducting an annual fisheries survey of the unnamed tributary in the Bertram Wildlife Area, which is south of Click's facility, just north of Highway 10. The Bertram Wildlife Area is a nature area open to the public but

owned and managed by the Clay County Conservation Board. Mr. Luzier stated that he had observed dead and dying fish and noticed a manure odor. He had counted approximately forty (40) dead fish.

45. The IDNR returned to the Highway 10 bridge to inspect the tributary and follow up on Mr. Luzier's observations. The IDNR observed a film on the water but live aquatic life was present. The IDNR proceeded upstream and began observing dead and dying fish. A field sample near the Bertram Wildlife Area indicated an ammonia concentration of 10-15 ppm. The IDNR observed 150-200 dead or dying fish.

46. The IDNR continued to Click's facility and spoke to Click. The IDNR inquired as to the sump pump Click had used to apply the manure, and he responded that it was a ½ horsepower Pit Viper sump pump.

47. On September 23, 2011, the IDNR returned to the Highway 10 bridge to inspect the tributary. Water clarity in the tributary had been reduced and the water still had a film on it. A field test indicated an ammonia concentration of 10-15 ppm.

48. The IDNR proceeded approximately 100 yards downstream and observed a heavy sheen on the water and a noticeable manure odor. A field test indicated an ammonia concentration of 10-15 ppm. The IDNR then went upstream from the Highway 10 bridge, to the box culvert at 140th Avenue. A field test of the tributary at the box culvert indicated an ammonia concentration of 30-60 ppm.

49. On September 26, 2011, the IDNR returned to the Highway 10 bridge to observe the tributary. The water at the bridge had a slight brown sheen. The IDNR also observed the water quality of the tributary at the box culvert at 140th Avenue. The water had a manure odor with settled manure evident at the bottom of the tributary.

50. On October 6, 2011, the IDNR spoke with Jason Genagon with Liberty Pump

regarding the capacity of the sump pump Click used to pump manure out of his pits. Mr. Genagon stated that Click's pump had the capacity to pump 69 gallons per minute with no resistance. Mr. Genagon calculated that the resistance of the two (2) inch hose Click was using to land apply the manure would reduce the capacity to 40 gallons per minute. The IDNR then estimated that, over a 3-4 hour period, Click land-applied at least 7,200 to 9,600 gallons of manure on September 18, 2011. The IDNR used the same calculation to estimate that, over a 5-6 hour period in August 2011, Click land applied at least 12,000 to 14,400 gallons of manure.

51. On October 17, 2011, the IDNR sent Click a Notice of Violation ("NOV"), outlining the violations observed during September 2011. The NOV also notified Click that the matter was being referred to the IDNR's legal department for a formal enforcement action.

VIOLATIONS

52. In August 2011, Click surface applied manure and failed to incorporate it within 24 hours in violation of his Manure Management Plan and 567 Iowa Admin. Code 65.17(7) and (12).

53. On or before September 18, 2011, Click surface applied manure and failed to incorporate it within 24 hours in violation of his Manure Management Plan and 567 Iowa Admin. Code 65.17(7) and (12).

54. On or about September 18-19, 2011, Click discharged a pollutant into a water of the state in violation of Iowa Code § 455B.186(1) and 567 Iowa Admin. Code 62.1(1).

55. On or about September 18-19, 2011, Click land-applied manure in a manner that discharged into a tile line that discharged directly into water of the state in violation of Iowa Code § 459.311(1) and 567 Iowa Admin. Code 65.2(3).

56. On or about September 18-19, 2011, Click land-applied manure in a manner which caused surface or groundwater pollution in violation of Iowa Code § 459.311(2) and 567 Iowa

Admin. Code 65.2(7).

57. On and after September 18, 2011, Click's discharge of manure into the unnamed tributary of the Little Sioux River produced discoloration of the water and a manure odor to the water resulting in violations of the water quality standard contained in 567 Iowa Admin. Code 61.3(2)(c).

58. On and after September 18, 2011, Click's discharge of manure into the unnamed tributary of the Little Sioux River resulted in concentrations or combinations of manure that was acutely toxic to human, animal, or plant life in a violation of the water quality standard contained in 567 Iowa Admin. Code 61.3(2)(d).

PRAYER FOR RELIEF

WHEREFORE, State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

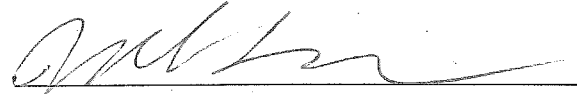
- a. assess a civil penalty against the Defendant Bruce Click, pursuant to Iowa Code section 455B.191(2), for each day of violation of Iowa Code sections 455B.186(1) and 459.311(1)-(2); and 567 Iowa Admin. Code 61.3(2)(c)-(d), 62.1(1), 65.2(3) and (7), and 65.17(7) and (12), not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation; and
- b. issue a permanent injunction ordering the Defendant Bruce Click, pursuant to Iowa Code section 455B.191(5), from any further violations of Iowa Code sections 455B.186(1) and 459.311(1)-(2); 567 Iowa Admin. Code 61.3(2)(c)-(d), 62.1(1), 65.2(3) and (7), and 65.17(7) and (12).

Plaintiff further requests that the Court tax the costs of this action to Click and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

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